

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. T18-0011

:

18409500151

:

RHONDA ALEXANDER

:

DECISION

PER CURIAM: Before this Panel on November 14, 2018—Administrative Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Kruse Weller, sitting—is Rhonda Alexander’s (Appellant) appeal from a decision of Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-51-2.2, “Stopping for school bus required—Digital video.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On February 26, 2018, a digital video recording captured a blue Honda CRV pass a stopped school bus on Eddy Street in Providence. (Tr. at 3:5-11.) Upon observing the video recording, Officer Francisco Furtado (Officer Furtado) of the Providence Police Department determined that a violation of § 31-51-2.2 had occurred. *Id.* Officer Furtado identified Appellant as the registered owner of the vehicle, and issued Appellant a summons for failing to stop for a school bus. *Id.* at 3:11-14; *see* Summons No. 18409500151.

At Appellant’s trial on June 19, 2018, Officer Furtado testified that he was assigned to watch the school bus violation videos. (Tr. at 3:2-3.) On March 1, 2018, Officer Furtado

reviewed the video recording and observed a line of three vehicles pass a stopped school bus. *Id.* at 7:10-24. Appellant's vehicle was the second vehicle in the video recording that passed the school bus. *Id.* at 7:14-21. Based upon his observations, Officer Furtado issued a summons to Appellant. *Id.* at 9:2-3.

Officer Furtado introduced the video recording as evidence at trial, and the Court played the video recording multiple times for the parties to explain what is happening in the video. *Id.* at 5:6-14. In viewing the video recording, the Trial Judge stated for the record, "So here's the video. It shows the bus stop, a few seconds going by. A few seconds, a few seconds, a few seconds with the stop sign and the lights blinking." *Id.* at 6:1-5.

Appellant argued at trial that she could not be found guilty of the charged violation because "the light isn't blinking as [her] car passes" the stopped school bus and "there is no flashing red light on" the school bus until after her car has passed the bus. *Id.* at 6:15-16; 10:16-17. Appellant further argued that the stop sign on the school bus was not fully extended when her vehicle passed, but rather "[i]t [was] coming out. . . . You can see it straighten." *Id.* at 10:24; 11:4-5. Lastly, Appellant testified that the school bus operated in an unusual manner, which is why she did not stop when she first observed the bus pulling over to the side of the road:

"[T]here was a malfunction, I believe, in [the bus driver's] door" because the bus driver "pulled away from the side of the street with the bus, without the door being full closed, and . . . it left the stop sign to be in a unique position, that wasn't operational with the flashing reds on." *Id.* at 14:-6; 21:8-13.

At the conclusion of all the testimony, the Trial Judge stated her findings of fact on the record. The Trial Judge determined that "this bus was stopped. The stop sign was out. You can see the lights on it[.]" *Id.* at 32:21-23. The Trial Judge further found, "I see three cars that go through the stop sign, and Ms. Alexander, you were the second one in the line of those vehicles[.]" *Id.* at 31:15-18. The Trial Judge fined Appellant \$250 for the violation. *Id.* at

32:18-21. Appellant filed a timely appeal of the Trial Judge's decision. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200,

208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant asserts that the Trial Judge’s decision to sustain the charged violation was “[i]n violation of . . . statutory provisions[,]” “[a]ffected by other error of law[,]” and “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(1), (4), and (5). Specifically, the Appellant contends the Trial Judge erred in sustaining the charged violation because there was insufficient evidence offered at trial to support the elements of the charge.¹ *See* Appellant’s Notice of Appeal at 2. Appellant maintains that the flashing red lights on the school bus were not activated as Appellant’s car passed the bus. *Id.*

The Rhode Island Supreme Court has consistently held: “[W]hen the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of*

¹ It is important to note that while this Panel is presented with a transcript of the proceedings, the record does not include the digital video recording that was introduced at trial. Therefore, this Panel is unable to view the video recording that was used as evidence in sustaining the charged violation. While “[a] party’s failure to provide this Court with part of the record may result in a dismissal of the appeal[,] . . . this rule is not absolute, and the waiver of appellate review has always depended on whether we are able to engage in a meaningful review of the proceedings below.” *Riley v. Stone*, 900 A.2d 1087, 1099 (R.I. 2006) (citing *State v. Pineda*, 712 A.2d 858, 861 (R.I. 1998)); *see also State v. Udin*, 419 A.2d 251, 253 (R.I. 1980). Since this Panel is presented with a complete trial transcript, this Panel is able to engage in a meaningful review of the trial proceedings despite the absence of the video recording.

Rhode Island, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, the Court “must examine an ambiguous statute in its entirety and determine ‘the intent and purpose of the Legislature.’” *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

Section 31-51-2.2(a) provides, in relevant part:

“Any vehicle being operated upon a street, highway, private way or private or public parking area upon meeting or overtaking from any direction *any school bus on which there is in operation flashing red lights, shall stop before reaching the bus.* The vehicle shall not proceed until the bus resumes motion or until the flashing lights are no longer actuated. An owner and/or operator of a motor vehicle operated in violation of this section based on evidence obtained from a live digital video school bus violation detection monitoring system shall, upon conviction of a violation of this section, be punished by a civil fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and/or suspension of his or her driving license for a period not to exceed thirty (30) days.” Sec. 31-51-2.2(a) (emphasis added).

Accordingly, the clear and unambiguous language of § 31-51-2.2(a) indicates that for a motorist to be found guilty of violating the statute, a trial judge must find by clear and convincing evidence that (1) school bus’s red flashing lights were activated, and (2) the driver failed to stop *before* reaching the school bus. *Id.*

Furthermore, this Panel must review the record and “determine whether the judge’s decision is supported by legally competent evidence. . . .[.]” *Link v. State*, 633 A.2d at 1348. In the instant matter, the record indicates that Appellant failed to stop her vehicle before reaching the school bus. Indeed, the Trial Judge found, “I see three cars that go through that stop sign, and [Appellant], you were the second one in line.” (Tr. at 31:15-17.) This finding is further supported by the Appellant’s own testimony: “The stop sign looks a little weird. It’s not in its full extended position . . . none of the flashers are on . . . [n]ot until my vehicle is respectfully

passed.” *Id.* at 14:8-19. However, the record fails to support a finding that the school bus’s flashing red lights were activated before the Appellant reached the bus. While there is sufficient evidence to support the conclusion that Appellant failed to stop her vehicle before reaching the school bus, there is no indication that the bus’s flashing red lights were activated before Appellant’s vehicle reached the bus. Officer Furtado only testified that he “felt [Appellant] had violated the statute” after observing the video, but he did not testify explicitly as to what he witnessed in the video recording. *Id.* at 12:10-13. Moreover, the Trial Judge stated as her findings of fact that “[t]he stop sign was out at the time. When I see the stop sign in the position, that it’s out, I shouldn’t see any cars, at all, in the picture, with that stop sign[,]” but the Trial Judge did not indicate whether the flashing lights were activated before Appellant’s car reached the school bus. *Id.* at 31:18-21.

After thoroughly reviewing the record, this Panel finds that there was insufficient evidence offered at trial to support the Trial Judge’s decision. *See Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp.*, 621 A.2d at 208). The Trial Judge erred in sustaining the charged violation in light of the fact that there was a lack of evidence demonstrating that the flashing lights on the school bus were activated before Appellant’s vehicle reached the bus. Accordingly, the Trial Magistrate’s decision was in violation of statutory provisions, affected by error of law, and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sec. 31-41.1-8(f)(1), (4), and (5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge's decision was in violation of statutory provisions, affected by other error of law, and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(1), (4), and (5). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Administrative Magistrate Joseph A. Abbate (Chair)

Magistrate William T. Noonan

Magistrate Erika L. Kruse Weller

DATE: _____